

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1308 OF 1985

Central Bank of India .. Plaintiffs

Vs.

Najmunisa Mohamed Rashid & Ors .. Defendants

Mr.A.Joshi i/b M/s.Mulla & Mulla Craigie Blunt &
Caroe for the plaintiffs

None for the defendants

CORAM : S.U.KAMDAR, J

DATED : 11TH JULY 2005

P.C.:

1. The present suit is filed for the recovery of Rs.75,907.26 alongwith interest @ 11% p.a. and for a declaration that the 'Matador' delivery van bearing no.MMS-747 is hypothecated. The plaintiffs has also sought direction that the said 'Matador' delivery van be permitted to be sold and the sale proceeds received thereof be applied towards the satisfaction of the plaintiffs claim. Some of the material facts of the present case are briefly set out as under:

2. Pursuant to the application made by the defendant no.1 for term loan facility, plaintiffs granted the same and defendants executed term loan agreement dt.27.4.79, letter of disbursement dt.27.4.79 and letter of interest dt. 27.4.79. Defendant no.2 and 3 executed in favour of the plaintiffs a deed of guarantee guaranting the repayment of the aforesaid amount. The said loan was thereafter disbursed by the plaintiffs to defendant no.1 and thereafter defendant no.1 by various letters of acknowledgment acknowledged the liability of the aforesaid amount.

3. On 7.1.84, the plaintiffs advocate addressed a notice calling upon the defendant no.1 to make payment since defendant no.1 have not paid the due instalments from time to time and interest thereon. However, defendants failed and neglected to pay the aforesaid amount and in response to the said notice against the said term loan facility defendants hypothecated 'Matador' delivery van bearing no.MMS-747 and the said Van is the security in respect of the said loan. The said Term Loan

agreement which has been executed on 27.4.79 interalia provides the hypothecation of the said vehicle and the loan has been advanced against the said hypothecation.

4. Defendant no.1 filed written statement and denied the claim. It has been interalia contended that her name reverted to Ms.Najmunnisa daughter of Abdul Gaffar Shaikh since she has taken divorce from her husband. It has been contended that she is an illiterate lady and therefore, documents which are obtained are not binding upon her and thus, the defendants are not liable to make the aforesaid payment. There is also a decree passed against defendant no.2 and 3. Issues were therefore, settled on 28.6.05 between the plaintiffs and the defendants.

5. In spite of various adjournments, none appeared for defendant no.1. Ultimately, I directed plaintiffs to give notice to the Advocate of defendant no.1 and furnish the affidavit of evidence and compilation of documents. Though the said Advocate has received the said letter

dt.7.7.05. Despite notice thereof, he is not appearing in the present case. In the aforesaid circumstances, compilation of documents is taken on record and marked Ex.P-1 collectively. Affidavit of evidence of Tilak Raj Agrawal is also taken on record. Such affidavit of evidence has not been challenged by way of cross-examination. In view thereof, I pass the following order:

6. There shall be a decree for the sum of Rs.75,907.26 together with interest @ 11% p.a. from the date of the suit till payment and also that the said 'Matador' delivery van bearing no.MMS-747 has been validly hypothecated by defendant no.1 to plaintiff no.1 and that the said van be sold and the sale proceeds received thereof be applied towards the satisfaction of the plaintiffs' claim. The learned counsel for the plaintiffs states that the said vehicle is with the Receiver. The said vehicle be accordingly sold in execution of decree. Suit disposed of accordingly.